



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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ADMINISTRATIVELY CLOSED

Northern Elastomeric, Incorporated
50 Pine Road
Brentwood, New Hampshire 03833

**ADMINISTRATIVE ORDER
No. ARD 01-001**

August 8, 2001

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Air Resources Division to Northern Elastomeric, Incorporated pursuant to RSA 125-C:15. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Air Resources Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Northern Elastomeric, Incorporated ("NEI") is a New Hampshire corporation having a mailing address of 50 Pine Road, Brentwood, New Hampshire 03833.

C. STATEMENTS OF FACTS AND LAW

1. RSA 125-C authorizes DES to regulate sources of air pollution in New Hampshire. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100-3600.
2. Specifically, RSA 125-C:6 authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 600.
3. Env-A 607.01 requires a stationary source subject to the New Source Performance Standards contained in 40 CFR 60 to obtain a temporary permit prior to the construction or installation of the source or device.
4. 40 CFR 60, Subpart UU ("Subpart UU") is a New Source Performance Standard that applies to any saturator, mineral handling and storage facility, or asphalt storage tank at an asphalt roofing plant that commences construction or modification after November 18, 1980. 40 CFR 60.471, part of Subpart UU, defines *saturator* to include the coaters.
5. RSA 125-C:2, XI defines a stationary source as "any building, structure, facility, or installation which emits or which may emit any regulated air pollutant."

6. NEI manufactures asphalt roll roofing materials on two production lines at its facility in Brentwood, NH ("the Facility"). The production lines are comprised of saturators, asphalt storage tanks, and a mineral handling and storage facility.
7. NEI is a stationary source that is subject to the New Source Performance Standard of 40 CFR 60.
8. DES performed a compliance inspection of the Facility on October 20, 1997 after receiving a letter from the Town of Brentwood informing DES of complaints from residents of smoke and odors from NEI. At the time of the inspection, Production Line #1 and Production Line #2 were in operation.
9. DES received an application for a temporary permit from NEI on February 13, 1998. According to the application, Production Line #1 was installed in 1992 and Production Line #2 was installed in 1994.
10. On April 7, 1998, DES issued Letter of Deficiency No. ARD 98-033 ("the 1998 LOD") to NEI for commencing construction of the Facility in 1992 and operating without having first obtained a temporary permit. The 1998 LOD requested NEI to perform emissions testing by May 29, 1998, and to submit to DES by June 30, 1998 the information required to complete the administrative review of NEI's permit application.
11. On April 20, 1998, DES received a letter from NEI in response to the 1998 LOD, which stated "NEI will schedule any and all performance testing required to provide necessary data to complete aforementioned permit applications. Testing will be scheduled no later than May 29, 1998."
12. NEI did not perform the testing as requested in the 1998 LOD.
13. By letter dated April 21, 1999, DES requested NEI to conduct stack testing to demonstrate compliance with Subpart UU within 60 days of receipt of the letter.
14. On July 19, 1999, DES received a copy of a letter sent by New England Air Testing Corp. ("NEAT") to EPA stating that NEAT had been retained by NEI to perform the testing required by Subpart UU. NEAT predicted the testing would occur at the end of August or the beginning of September 1999.
15. DES issued Temporary Permit FP-T-0031 ("the Permit") to NEI on August 6, 1999. Condition I.B. requires the Facility to operate in accordance with Subpart UU. Condition IV specifies the emission limitations for the facility. Condition VII.A of the Permit requires NEI to conduct performance testing in accordance with Subpart UU, on both the East and West Coating Lines within 60 days of Permit issuance. The testing should have been performed by October 5, 1999.
16. N.H. Admin. Rules, Env-A 604.01, Permit Content, requires compliance with the terms and conditions of all temporary permits and permits to operate.
17. The Permit requires the following specific performance testing on the following devices:
 - a. Particulate emissions testing for Production Line #1 and #2 Coater stacks;
 - b. Visible emissions from the Production Line #1 and #2 Coater stacks;
 - c. Visible emissions from the Production Line #1 and #2 coater fume capture hoods;

- d. Visible emissions from vents on 2 of the asphalt storage tanks, i.e., the Flux Tank and the Coating Tank;
- e. Visible emissions from the baghouse vents on the Sand, Filler and Granule Storage Silos;
- f. Visible emissions from the Sand and Granule (Mineral) Belt Conveyor;
- g. Visible emissions from the Filler Screw Conveyor; and
- h. Visible emissions from the Mineral Capture Baghouse stack.

18. NEAT performed testing at the Facility on several days during the period of October 21 through November 19, 1999.

19. DES received a report from NEAT on January 31, 2000. The report contained the results of the testing completed at NEI during the period of October 21 through November 19, 1999.

20. Based on DES's review of the test report, the following testing on the following devices was completed and passed successfully:

- a. Particulate emissions testing for Production Line #1 and #2 Coater stacks;
- b. Visible emissions from the Production Line #1 Coater stack;
- c. Two of the three required visible emission runs from Production Line #2 Coater stack;
- d. Visible emissions from the Production Line #1 coater fume capture hood; and
- e. Visible emissions from the Production Line #2 coater fume capture hood.

21. Based on DES's review of the test report, the following testing on the following devices was attempted and partially completed:

- a. One of the three required visible emissions runs from the baghouse vents on the Filler Storage Silo. However, the run length was only for 15 minutes duration, not the required 60 minutes; and
- b. One of the three required visible emissions runs from the baghouse vents on the Granule Storage Silo. However, the run length was only for 17 minutes duration, not the required 60 minutes.

22. Based on DES's review of the test report, the following devices either failed to meet the standard for visible emissions set forth in the Permit or the devices were not tested:

- a. Visible emissions from the vent on the Flux asphalt storage tank;
- b. Visible emissions from the vent on the Coating asphalt storage tank;
- c. Visible emissions from the baghouse vents on the Sand Storage Silo;
- d. Visible emissions from the Sand and Granule Belt Conveyor;
- e. Visible emissions from the Filler Screw Conveyor; and
- f. Visible emissions from the Mineral Capture Baghouse stack.

23. On February 25, 2000, DES issued Letter of Deficiency No. ARD 2000-003 ("the 2000 LOD") to NEI for failing to complete all the stack testing required by the Permit within 60 days of Permit issuance. The 2000 LOD requested that NEI complete the required testing within 30 days of receipt of the 2000 LOD.

24. On March 29, 2000, DES received an addendum to the first stack test report from NEAT with results of additional testing performed at NEI on several days during the period of March 3 through March 21, 2000.

25. Based on DES's review of the addendum to the test report, the following testing on the following devices was completed and passed successfully, or was partially completed:

- a. The last of the three required visible emission tests for the Production Line #2 Coater stack;
- b. Visible emissions from the baghouse vents on the Filler Storage Silo. However, the run durations were only 33 and 42 minutes, not the required 60 minutes;
- c. Visible emissions from the Filler Screw Conveyor;
- d. The last two of the three required visible emissions runs from the baghouse vents on the Granule Storage Silo. However, the final run duration was only 32 minutes duration, not the required 60 minutes;
- e. One of the three required visible emissions runs from the baghouse vent on the Sand Storage Silo; and
- f. Two of the three required visible emissions runs from the Mineral Capture Baghouse stack.

26. Based on DES's review of both test reports, the following testing on the following devices failed to meet the standard for visible emissions set forth in the Permit, the device has not been tested, or documentation has not been provided which demonstrates compliance:

- a. Visible emissions from the vent on the Flux asphalt storage tank;
- b. Visible emissions from the vent on the Coating asphalt storage tank
- c. Visible emissions from the Sand and Granule Belt Conveyor;
- d. Two of the three required visible emissions runs from the baghouse vent on the Sand Storage Silo; and
- e. The last of the three required visible emissions runs from the Mineral Capture Baghouse stack.

27. On March 29, 2000, DES received written correspondence from NEI stating that modifications to the Flux and Coating asphalt storage tanks and the Sand and Granule Belt Conveyor would be completed by August 1, 2000. The modifications were required in order to meet the visible emissions standards in the Permit. The letter stated that a new closed dense-flow, or pneumatic, material transfer system would replace the mineral belt conveyor. The letter also stated that NEI was seeking an exemption from the visible emission testing requirements in the Permit for its five Mix Tanks and would draft a petition for exemption within 30 days of the letter.

28. On September 18, 2000, DES received written correspondence from NEI stating that modifications to the Flux and Coating asphalt storage tanks were expected to be completed by October 13, 2000. The letter also stated that installation of the pneumatic transfer system had been divided into two parts to allow for continuous plant operation during the installation. The first part of the installation was expected to be completed by September 1, 2000, and the visible emissions testing for that part would be completed on September 16, 2000. Installation of the second part of the project would begin after successful testing of the first part. NEI also stated that the Mix Tank exemption request was in progress.

29. On November 6, 2000, DES received written correspondence from NEI stating that all modifications to the Flux and Coating asphalt storage tanks were expected to be complete by November 17, 2000. NEI also stated that its consultant was working on the Mix Tank exemption request.
30. NEI also stated in the November 6, 2000 letter that the modification of the mineral handling system to the pneumatic transfer system on Production Line #1 was complete, and that the same system would be completed on Production Line #2 by January 2, 2001.
31. On March 16, 2001, DES received written correspondence from NEI stating that the modifications on the asphalt storage tanks were complete and that visible emissions testing was expected to be completed and the data submitted by April 15, 2001. NEI further stated that the pneumatic transfer system was complete on both production lines, and that the dust collection system on Production Line #2 was expected to be complete by June 1, 2001. Lastly, NEI stated that its consultant was still working on the Mix Tank exemption request, and expected to submit the petition as soon as it was completed.
32. The modification of Production Line #2 from manufacturing smooth-surfaced roofing material to mineral-surfaced roofing material makes it subject to the more stringent particulate emissions limit set forth in Condition IV.B.1.a of the Permit. Prior to the modification, Production Line #2 was subject to the particulate emission standard set forth in Condition IV.B.1.b of the Permit.
33. The permit requires NEI to conduct performance testing demonstrating compliance with the more stringent particulate emission limit on the modified Production Line #2 within 60 days after achieving maximum production rate, but not later than 180 days after startup, after completion of the modification.
34. Env-A 607.10(a) states that "If an applicant submits a timely application that has been deemed complete by the division for the reissuance of a temporary permit or an initial state permit to operate, the failure to have a current and valid temporary permit shall not be considered a violation of RSA 125-C:11, I or Env-A 607.01..."
35. Env-A 607.09 (a) states that "The owner or operator may request a reissuance of a temporary permit for a period not to exceed one year, provided that...actual construction has been completed by the expiration date, even though any required compliance testing may not have been completed..."
36. Env-A 607.09 (b) states that "The owner or operator shall file a written request for a reissuance, specifying the basis for such request, with the director at least 90 days prior to the designated expiration date of a temporary permit".
37. NEI's temporary permit was no longer valid after February 28, 2001
38. NEI did not complete the testing that was required to be completed within 60 days issuance of the Permit. In addition, NEI has not performed the testing that was required by the Permit after the modification to Production Line #2.
39. On February 26, 2001, DES received a request for reissuance of the Permit from NEI.

40. NEI failed to submit a timely application for reissuance of the Permit, and is therefore operating without a permit in violation of Env-A 607.01.
41. Env-A 907.01(c) and Item X.A of the Permit requires NEI to submit an annual emissions report beginning in calendar year 1999, to DES by April 15 of the following calendar year. The report is required to contain actual calendar year emissions on a monthly basis for the Facility and asphalt coating usage for the Facility.
42. RSA 125-C:6, XI allows the Commissioner to require the owners or operators of stationary sources to make periodic reports to the commissioner on the nature and amounts of emissions from such stationary sources.
43. NEI did not submit the annual emission report for calendar year 1999 until April 11, 2001. NEI also submitted the annual emission report for calendar year 2000 on April 11, 2001. Addendums to the 1999 and 2000 annual reports, correcting errors in the annual emissions reported in the first reports, were submitted to DES on May 8 and May 18, 2001, respectively.
44. Env-A 704.01 requires any applicant, owner or operator of a stationary source, area source, or device which requires a temporary permit, state permit to operate, Title V operating permit, or any combination of the foregoing permits pursuant to Env-A 600, to pay annual emission-based fees. The fees must be submitted to the Division no later than October 15 for the previous calendar year, starting in calendar year 1995 for calendar year 1994 actual emissions.
45. Condition VIII of the Permit requires NEI to pay an annual emission-based fee in accordance with Env-A 704.
46. NEI did not submit the annual emission-based fee for calendar year 1999 until May 10, 2001. The 1999 emissions-based fee was required to have been submitted to DES on or before October 15, 2000. No emission-based fees have been paid for calendar years 1994 through 1998.

D. DETERMINATION OF VIOLATIONS

1. NEI has violated the emissions testing requirements of Condition VII.A. of the Permit by failing to perform all testing required by the Permit within 60 days of Permit issuance.
2. NEI has either violated the standards for visible emissions set forth in the Permit, failed to test the device, or has not provided documentation which demonstrates compliance for those devices noted in Paragraph 26 of Section C of this Order.
3. NEI has violated Env-A 607.09 by failing to submit a written request for a reissuance of its permit at least 90 days prior to the designated expiration date.
4. NEI has violated Env-A 607.10(a) by continuing to operate without a valid permit since February 28, 2001.
5. NEI has violated Env-A 704.01 by failing to pay annual emission-based fees for calendar years 1994 through 1998.

6. NEI has violated Env-A 907.01 by failing to report its 1994 through 1998 emissions data by April 15 of the following year.
7. NEI has violated Env-A 907.01 and Condition X.A of the Permit by failing to report its 1999 emissions data by April 15, 2000.

E. ORDER

Based on the above findings, DES hereby orders NEI as follows:

1. Within 15 days of this Order, submit to DES in writing a summary of all emissions testing that has been completed to date. The summary shall include the following:
 - a. The applicable number of test runs and duration of test for each emission point tested as set forth in the Permit;
 - b. The test data that demonstrates compliance with the emissions limitations set forth in Condition IV of the Permit; and
 - c. Any testing requirements as stated in the Permit that have not yet been completed.
2. Within 15 days of this Order, provide DES with a detailed explanation of the efforts made by NEI to complete the testing as stated in the Permit. This explanation should include the period of time from the issuance on April 7, 1998 of the 1998 LOD until the present.
3. Within 15 days of this Order, provide DES with a summary of all process modifications and associated costs that were incurred by NEI to demonstrate compliance with the emissions limitations as set forth in the Permit.
4. Within 30 days of this Order, complete any performance testing required to have been completed within 60 days of issuance of the Permit as stated in Condition VII.A of the Permit. Testing shall be performed as stated in the Permit and DES shall observe all testing.
5. Within 45 days of this Order, submit to DES a test report containing the results of all remaining testing that was required to be performed within 60 days issuance of the Permit.
6. Conduct the stack testing as set forth in Condition VII.A of the Permit for particulate emissions on the modified Production Line #2. The testing shall demonstrate compliance with the emissions limitations set forth in Condition IV.B.1.a of the Permit. The testing shall be conducted within 60 days of the effective date of this Order with the test results submitted to DES within 30 days of completing the test.
7. Within 15 days of this Order, submit to DES the emissions data for the years 1994 through 1998.
8. Upon receipt of the emissions data for 1994 through 1998, DES will calculate the past-due emission-based fees owed by NEI for calendar years 1994 through 1998 actual emissions and DES will invoice NEI for the past-due emission-based fees. Within 15 days of receipt of the invoice, submit a check payable to "Treasurer, State of New Hampshire" for the amount of the past-due emissions-based fees.

9. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Ray Walters, Senior Enforcement Engineer
Compliance Bureau
DES Air Resources Division
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095
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e-mail: rwalters@des.state.nh.us


F. APPEAL

Any person aggrieved by this Order may appeal the Order to the Air Resources Council by filing an appeal that meets the requirements specified in Env-AC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>. Appealing the Order does not automatically relieve NEI of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 125-C provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. NEI remains obligated to comply with all applicable requirements, in particular the need to report annual emissions, pay emission-based fees and submit timely applications for permit renewal. DES will continue to monitor NEI's compliance with applicable requirements and will take appropriate action if additional violations are discovered.


Kenneth A. Colburn, Director
Air Resources Division


George Dana Bisbee, Assistant Commissioner

Certified Mail/RRR: [7099 3400 0002 9772 6010]

cc Gretchen Rule, DES Enforcement Coordinator
Public Information Officer, DES PIP Office
NH AGO
T. McCusker, EPA Region I
D. Sommers, Chairman of Selectmen, Brentwood
Enforcement File